

1
2
3
4 The Honorable Barbara J. Rothstein
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 IN RE: PHENYLPROPANOLAMINE
10 (PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

CASE MANAGEMENT ORDER
NO. 17B REMAND OF CASES

11 _____
12 This document relates to all
13 actions.
14

15 This case management order replaces and supercedes Case
16 Management Order ("CMO") No. 17 and CMO No. 17A, both entered on
17 entered on November 18, 2003.

18 I. INTRODUCTION

19 Proceedings in this MDL 1407 began in earnest with the Order
20 re Initial Conference dated November 1, 2001, requiring plaintiffs
21 and defendants to submit proposed committee rosters, and scheduling
22 the initial conference in this MDL for November 16, 2001. Since
23 then: (1) generic fact discovery (including written discovery,
24 document production and review, discovery depositions, and requests
25 for admissions) has been completed or substantially completed as to
26 most MDL defendants for which "common benefit" discovery is being

1 undertaken by the Plaintiffs; (2) a procedure for case-specific
2 fact discovery in each case has been implemented, and discovery
3 pursuant thereto in cases subject to these MDL proceedings has been
4 underway since 2002; (3) Rule 26 disclosures of generic experts
5 have been made, discovery depositions of those experts are
6 complete; and a process has been established to permit the adoption
7 of those experts' opinions in other cases transferred or being
8 transferred to this MDL; (4) trial preservation depositions of
9 several of plaintiffs' and defendants' generic experts are underway
10 or have been taken; (5) and *Daubert* motions challenging plaintiffs'
11 generic medical experts' opinions as to general causation,
12 briefing, and hearings on said motions are now complete, and the
13 Court has issued its Decision on said motions.

14 Given the foregoing, the Court is satisfied that this Multi-
15 District Litigation has sufficiently matured, such that qualified
16 cases may now be considered by the Court for purposes of issuing a
17 Suggestion of Remand to facilitate their remand by the Judicial
18 Panel on Multidistrict Litigation ("JPML") to their transferor
19 courts for further case-specific proceedings and final disposition,
20 subject to the following procedures and conditions:

21 **II. REMAND CRITERIA- RIPENESS**

22 Generic fact discovery of defendants was required to be
23 completed within specific time periods, as set forth in CMO No. 1,
24 subject to certain extensions of time. Discovery as to experts on
25 general causation, and issues of general applicability, was
26 required to be completed by no later than March 10, 2003, with

1 subsequently transferred cases subject to the provisions of CMO No.
2 9, providing for the adoption of or designation of experts on
3 issues of general applicability. Case-specific fact discovery of
4 plaintiffs in each case subject to these MDL proceedings was
5 required to be completed within specific time periods depending on
6 when each case was docketed in these proceedings, as set forth in
7 CMO Nos. 6 and 6A.

8 In any case docketed in this MDL, a case will only be
9 considered ripe for remand if the case is in compliance with CMOs
10 Nos. 1, 6, 6A, 10, 13, 13A, 15, and any additional orders entered
11 by this Court, and all other generic fact and expert discovery
12 permitted in this MDL as to the parties to that case is time
13 barred. Specifically, all of the following criteria must be
14 completed and/or fulfilled before a case will be considered ripe
15 for remand:

16 . Plaintiff's fact sheet must be substantially complete per CMO
17 Nos. 6 and 6A and all identified deficiencies must be corrected
per CMO Nos. 6, 6A and 10;

18 . Plaintiff has executed all appropriate authorizations,
19 including new HIPAA-compliant authorizations if requested by
defendants, as required by CMO Nos. 6 and 6A;

20 . Any permitted and timely filed discovery propounded by
21 defendant pursuant to CMO Nos. 6, 6A, or 10 shall be completed
with no discovery disputes remaining unresolved;

22 . The deadline, as the same may have been extended by
23 stipulation or Court order, for case-specific fact discovery
must have passed and not be subject to any extensions under CMO
24 Nos. 6, 6A or 10;

25 . If applicable to the case, plaintiff must have complied with
the requirements of CMO No. 15 and any additional orders
26 entered by this Court;

. The deadline for adopting or identifying generic experts per

1 CMO No. 9 has passed;

2 . Any summary judgment motion arising from the Court's *Daubert*
3 Order entered June 18, 2003, applicable to the case must have
4 been ruled upon.

5 **III. REMAND PROCEDURE**

6 **A. Petition for Suggestion of Remand Order**

7 At any time after a case is ripe for remand, counsel of record
8 for any party to the case may file a Petition for Suggestion of
9 Remand Order ("Petition") in the form attached hereto. A separate
10 Petition must be filed in each case for which remand is sought.
11 Counsel of record shall not file a Petition unless they can certify
12 in good faith that the case/s for which remand is sought is or are
13 ripe for remand. Petitioning counsel shall serve a copy of the
14 Petition upon Plaintiffs' Liaison Counsel Lance Eugene Palmer,
15 Defendants' Liaison Counsel D. Joseph Hurson and Defendants'
16 Liaison Counsel Douglas A. Hofmann (hereinafter, "liaison
17 counsel"), as well as counsel of record in the case sought to be
18 remanded. To the extent possible, service upon liaison counsel
19 should be electronic.

20 **B. Objections and Responses**

21 A party to a case may file a written objection to a Petition
22 within twenty (20) days of the date the Petition was filed.
23 Objections shall be limited to ten (10) double-spaced pages. Any
24 party may object to a Petition, including objections based upon any
25 of the criteria set forth in Section II, above. The written
26 objection shall identify all reasons why the case is not ripe for
remand. Within five (5) days of the filing of an opposition, the

ORDER

Page - 4 -

1 petitioning party may file a response that shall be limited to five
2 (5) pages. Objections and responses must be served on liaison
3 counsel, as well as counsel of record in the case sought to be
4 remanded. To the extent possible, service upon liaison counsel
5 should be electronic. There shall be no hearings permitted on any
6 given Petition except by leave of court.

7 **C. Eligibility for Remand**

8 The Court will consider petitions on a monthly basis. On the
9 first official court day of each month, liaison counsel shall
10 provide the Court with a list of petitions that are ready for
11 a determination of eligibility. The list should identify each
12 petition for which the deadline for filing responsive pleadings has
13 passed. After considering the petitions on liaison counsel's list,
14 Magistrate Judge Theiler will issue an order setting forth the
15 Court's determination as to which cases are eligible for remand
16 that month.

17 Any case in which a Petition has been filed will be deemed
18 eligible for remand if (a) no written objection is filed within
19 twenty (20) days of the filing of the Petition, or (b) upon the
20 Court overruling any written objection to the Petition. A party
21 whose case has been deemed not eligible for remand as a result of
22 a successful objection to a Petition may file a subsequent Petition
23 after curing the grounds on which the objection was sustained.

24 **D. Spreadsheet of Cases Deemed Eligible for Remand**

25 Following issuance of Magistrate Judge Theiler's order, the
26 parties shall cooperate in preparing a spreadsheet of the cases

1 deemed eligible for remand that month. This document shall contain
2 the following data as to each case: case caption, transferor
3 court, date of original filing, date of docketing in this MDL, date
4 of injury, specific type of injury claimed, identity of all
5 defendants, and estimated length of trial. The parties shall
6 provide the spreadsheet in electronic format to the Court five (5)
7 days after the issuance of an order by the Magistrate Judge
8 indicating which cases are eligible for remand.

9 **E. Briefing Schedule**

10 No later than five (5) days after issuance of an order by the
11 Magistrate Judge indicating which cases are eligible for remand,
12 Plaintiffs' and Defendants' Steering Committees may submit
13 memoranda to the Court setting forth their respective views
14 concerning which of the cases deemed eligible for remand should be
15 named in a Suggestion of Remand Order. If either Steering Committee
16 is of the view that one or more of the cases deemed eligible for
17 remand should not be named in the next Suggestion of Remand Order,
18 that Committee must identify those cases, and its argument against
19 remand. The objecting Steering Committee must serve a copy of its
20 memorandum upon all parties to each of the cases in which it
21 opposes remand on or before the date that the memorandum is filed
22 with the Court. In each such case, the petitioning party may file
23 a responsive pleading not to exceed five (5) pages, no later than
24 five (5) days after being served with the memorandum.

25 **F. Selection of Cases for Remand**

26 After receiving the spreadsheet listing all cases deemed

1 eligible for remand, and after the deadline for the filing of
2 memoranda and responsive pleadings, if applicable, the Court will
3 issue a preliminary order selecting cases for remand from the pool
4 of those deemed eligible for remand by the Magistrate Judge. This
5 preliminary order will precede the Suggestion of Remand Order, see
6 Section III(G), below. Entry of this preliminary order will trigger
7 the obligations, as set forth in CMO No. 18A Requirement of
8 Alternative Dispute Resolution, for the parties selected for remand
9 by the Court in the preliminary order.

10 **G. Suggestion of Remand Order**

11 Following issuance of the preliminary order selecting cases
12 for remand, the Court will issue a Suggestion of Remand Order to be
13 forwarded to the JPML.

14 **H. Conditional Remand Order from the JPML**

15 Within seven (7) days of the date that a Conditional Remand
16 Order is filed by the JPML with this transferee court, the parties
17 will submit a joint proposed Final MDL Pretrial Order for the
18 Court's signature. Such order will describe the events that have
19 taken place in MDL 1407 and those items that require further action
20 by the transferor court. A copy of the Final MDL Pretrial Order,
21 along with the case file and materials, will be provided to the
22 transferor court.

23 **IV. CONCLUSION**

24 As the remand process progresses, it may become clear that
25 aspects of this procedure could benefit from modification in
26 order to make improvements or to lessen the burden on any

1 participant in this process. Such participants may include the
2 JPML, the parties, this Court, any of the transferor courts, the
3 Special Master, or the Magistrate Judge. The parties are
4 instructed to confer prior to proposing changes to this procedure
5 to the Court.

6
7 DATED this 23rd day of March, 2004.

8
9 s/ Barbara Jacobs Rothstein
10 HONORABLE BARBARA JACOBS ROTHSTEIN
11 UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 IN RE: PHENYLPROPANOLAMINE
8 (PPA) PRODUCTS LIABILITY
9 LITIGATION,

MDL NO. 1407

PETITION FOR
SUGGESTION OF REMAND
ORDER

10 This document relates to the
11 following actions: [insert
12 case name and docket
13 number]

14 The below-signed counsel of record in the following
15 case:

16 [insert case name and docket number]

17
18 hereby certifies to the Court in good faith that the
19 described case has completed case-specific fact
20 discovery, and that all other generic fact and expert
21 discovery as to each defendant is complete or time-
22 barred, and otherwise is ripe for remand to its
23 transferor court for further proceedings and disposition.

24 The below-signed counsel further certifies in good
25 faith that the following information is accurate:
26

Case Caption: _____
Transferor Court: _____
Date of Original Filing: _____
Date Docketed in MDL 1407: _____
Date of Alleged Injury: _____
Specific Type of Injury Claimed: _____
Identity of All Defendants: _____
Estimated Length of Trial: _____

DATED at this __ day of _____, 200__.

Respectfully Submitted,

Name
Firm
Address/ Phone